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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,277	11/20/2001	Frederic Lagace	CLW 2 0098-1-2	1192

7590

08/11/2005

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EXAMINER
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DUONG, THO V

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary****Application No.**

09/989,277

**Applicant(s)**

LAGACE ET AL.

**Examiner**

Tho v. Duong

**Art Unit**

3743

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 40-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 40-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

Receipt of applicant's amendment filed 5/16/2005 is acknowledged. Claims 40-50 are pending.

### *Allowable Subject Matter*

The indicated allowability of claims 40-50 are withdrawn in view of the newly rejections.

Any inconvenience is regretted.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 40-43 and 46-50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,889,750 in view of C. G. Munters et al. (US 3,125,157). Claims 1-5 disclose substantially all of the limitations except for the limitation that a sensible heat exchanger defines a first and fourth air path means. Munters discloses (figure 1, and column 1, lines 48-55) a combined heat and moisture exchanger that has a sensible heat exchanger (38) disposed adjacent to the desiccant heat

Art Unit: 3743

exchanger (36), which is rotated by an electric motor to form a first and fourth air path (see figure A in previous Office Action) for the purpose of providing an exchanger which besides possessing high heat economy is also capable of keeping and extracting the higher absolute moisture of the air escaping from the room. It would have been obvious to one of having ordinary skill in the art at the time the invention was made to use Munster's in the patent for the purpose of providing an exchanger which besides possessing high heat economy is also capable of keeping and extracting the higher absolute moisture of the air escaping from the room.

Claims 44-45 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,889,750 in view of Munters and Morissette et al. (US 5,193,610). Claims 1-5 and Munsters disclose substantially all of the limitations except for the limitation that the sensible heat exchanger is of a rectangular parallelepiped shape, which has air-to-air heat exchanging walls. Morissette discloses (figure 1 and column 7, lines 29-47) a defrostable ventilation system that has a sensible heat exchanger (11) being a rectangular parallelepiped shaped that has two air paths disposed at right angles to each other for the purpose of achieving the self draining function of the heat exchanger. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Morissette's teaching in the patent for the purpose of achieving the self-draining function of the heat exchanger.

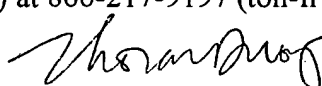
### *Conclusion*

Art Unit: 3743

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tho v. Duong whose telephone number is 571-272-4793. The examiner can normally be reached on M-F (first Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennet can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tho v Duong  
Primary Examiner  
Art Unit 3743



TD

August 8, 2005